

## Employee or Independent Contractor?

In order to determine whether an individual is an employee of the University or an independent contractor, you must evaluate all of the circumstances related to the relationship between the individual and the University, including the “economic reality” of situation. This involves determining whether (1) the individual is permitted to work or employed to perform work for the University, which controls and directs the work and the method the work is performed (and therefore an “employee”), or (2) whether the individual is in business for themselves and performs services for other entities (and therefore an “independent contractor”). The fact that an individual works remotely or telecommutes is not determinative as to whether an individual is an employee or an independent contractor.

The University considers six (6) main considerations in determining whether an individual is an employees or independent contractor. These include: 1) the opportunity for profit or loss depending on managerial skill, 2) investments by the individual and the potential employer, 3) the degree of permanence of the work relationship, 4) the nature and degree of control by the employer, 5) the extent to which the work performed is an integral part of the employer’s business, and 6) the skill and initiatives of the individual.

Below is a list of factors to consider which relate to these considerations. All factors must be weighed as a whole, and no one factor is to be given greater weight over the others.

Internal Revenue Service (IRS) guidelines and examples are available at <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>.

	<u>YES</u>	<u>NO</u>
<b>Behavioral Control</b> (more “yes” answers = more likely an employee)		
<b>1. Does the University control or have the right to control the individual as to:</b>		
• When and where to complete the work.		
• What tools or equipment to use in completing the work.		
• Who to hire to assist in completing the work, if necessary.		
• Where to purchase any supplies or services needed to complete the work.		
• What, if any, work must be completed by a specific individual.		
• The order in which to complete the work.		
<b>2. Did the University train the individual to perform the work in a specific way?</b>		
<b>3. Does the university require the individual to provide reports as to their progress?</b>		
<b>Financial Control</b> (more “yes” answers = more likely a contractor)		
<b>1. Did the individual provide the tools/supplies for the work and/or invest in the equipment and facilities used to complete the work?</b>		
<b>2. May the individual make a profit, or potentially suffer a loss, in completing the work?</b>		

3. Does the University pay the individual by project rather than hourly, weekly or by time expended?		
4. Does the individual pay for expenses related to the work rather than the University reimbursing for expenses?		
5. Does the individual work for another employer or offer their services to the general public?		
<b>Relationship</b> (more “yes” answers = more likely an employee)		
1. Does, or will, the individual receive an offer letter rather than a written contract with the University describing the type of relationship?		
2. Does the University provide the individual benefits?		
3. Is there an ongoing or indefinite relationship between the individual and the University?		
4. Is the work the individual performs a key aspect of the University or the department for which he or she performs the work?		